



Based upon the evidence presented and for the purpose of preliminary hearing the Appeals Board finds as follows:

Claimant first contends that the Special Administrative Law Judge exceeded his jurisdiction by stopping temporary total disability compensation. K.S.A. 44-534a(a)(2), as amended grants the administrative law judge authority to grant or deny temporary total disability compensation at a preliminary hearing pending a full hearing on the claim. Appeals from preliminary hearings are granted only from findings regarding the following disputed issues which are considered jurisdictional and subject to review by the Appeals Board:

- (1) Whether the employee suffered an accidental injury.
- (2) Whether the injury arose out of and in the course of the employee's employment.
- (3) Whether notice is given or claim timely made.
- (4) Whether certain defenses apply.

K.S.A. 44-551(b)(2)(A), as amended, provides that the Appeals Board shall not review a preliminary hearing order entered by the administrative law judge unless it is alleged the administrative law judge exceeded his jurisdiction in granting or denying the relief requested. As K.S.A. 44-534a, as amended, specifically allows the administrative law judge the authority to decide issues dealing with temporary total disability compensation and as this issue does not appear in K.S.A. 44-534a, as amended, as one subject to review by the Appeals Board from a preliminary hearing, the Appeals Board finds it does not have the jurisdiction to review this decision.

Claimant further contends that the procedural requirements of K.S.A. 44-534a, as amended, were not followed by respondent in requesting this preliminary hearing.

The statute which created the Appeals Board, K.S.A. 44-555c, states in part:

"(a) There is hereby established the workers compensation board. The board shall have exclusive jurisdiction to review all decisions, findings, orders and awards of compensation of administrative law judges under the workers compensation act. The review by the board shall be upon questions of law and fact as presented and shown by a transcript of the evidence and the proceedings as presented, had and introduced before the administrative law judge."

Questions presented to the Appeals Board must, by law, first be presented to the administrative law judge. The issue dealing with respondent's procedural path to this preliminary hearing was not raised before the Special Administrative Law Judge. There was no objection at the preliminary hearing to respondent's application or notice. As such, the Appeals Board is limited in its ability to review both questions of law and fact as they must be "presented and shown . . . before the administrative law judge."

The Appeals Board cannot review this matter until such time as the Special Administrative Law Judge first rules upon claimant's objections. This not having been done, the Appeals Board does not have the jurisdiction to review this issue.

Claimant next contends that the evidence at the preliminary hearing was not sufficient to support the decision by the Special Administrative Law Judge that claimant had met maximum medical improvement. It is within the Special Administrative Law Judge's authority and jurisdiction to decide issues dealing with disputes over the interpretation of medical evidence. While the Appeals Board may have the jurisdiction, after the final hearing, to review the medical evidence and to ascertain whether the evidence supports the Special Administrative Law Judge's decision, the Appeals Board does not have this jurisdiction on appeal from a preliminary hearing. As such, the Appeals Board must again find that it does not have the jurisdiction to review this disputed matter.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order entered by Special Administrative Law Judge Michael T. Harris dated June 28, 1996, remains in full force and effect.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of August 1996.

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BOARD MEMBER

c: Norman I. Cooley, Wichita, KS  
William L. Townsley III, Wichita, KS  
Michael T. Harris, Special Administrative Law Judge  
Philip S. Harness, Director